Office of Energy Resources

State Energy Program – Renewable Energy Projects

RULES and REGULATIONS

For Non-Utility Scale Projects

Section 1.00. Purpose.

The Office of Energy Resources in order to develop an integrated system for effective renewable energy development from diverse sources in Rhode Island and to take advantage and meet the requirements of the Recovery Act-SEP for the benefit of Rhode Islanders hereby adopts these rules and regulations.

The State of Rhode Island recognizes that there are job creation, energy cost savings, and environmental benefits from reducing energy consumption and developing diverse renewable resources in the state. Rhode Island has been awarded funding from Federal American Recovery and Reinvestment Act-State Energy Program, which can aid in realizing the above benefits. With regard to programs administered by the Office of Energy Resources, the Recovery Act has the following purposes:

1) creation and retention of jobs,
2) realizing energy cost savings,
3) reducing dependence on imported fuels,
4) leveraging funds,
5) transforming markets, and
6) building program sustainability.

Section 2.00. Legal Authority.

These rules and regulations are promulgated pursuant to the requirements and provisions of R.I.G.L. §42-140-9; 42-11-2; 42-35-1 and 42-35-1.1

Section 3.00. Definitions.

For the purposes of these regulations, the following terms shall have the following meanings:

3.01. “Affordable Housing” means any of affordable housing or low and moderate income housing as defined in R.I.G.L . Title 42, Chapter 128, or Title 45, Chapter 53, or such other superceding statutes as may be implemented by the State of Rhode Island from time to time.

3.02. “Building Code” means the most recent version of any applicable code that has been adopted by the Building Code Standards Committee, pursuant to RI General Laws 23-27.3-100.1.5, 23-27.3-100.1.5.4, or 23-27.3-100.1.5.3.

3.03. "Commissioner" means the Commissioner of the Office of Energy Resources.

3.04. “Corporation” means the Rhode Island Economic Development Corporation as established, administered and governed by R.I.G.L. Title 42, Chapter 64, as amended.

3.05. "Customer-sited facility" means a renewable energy facility of an end-user that primarily meets energy needs of the end-user and is located on property owned or controlled by the end-user, and, if the renewable energy facility generates electrical power, is interconnected on the end-use customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the end-use customer;

3.06. "Eligible biomass fuel" means fuel sources including brush, stumps, lumber ends and trimmings, wood pallets, bark, wood chips, shavings, slash and other clean wood that is not mixed with other solid wastes; agricultural waste, food and vegetative material; energy crops; landfill methane; biogas; or neat bio-diesel and other neat liquid fuels that are derived from such fuel sources;

3.07 “Eligible facilities and eligible locations” means for Renewable Energy Projects facilities and property owned or leased by the Proposer. If the facility or property is leased, the Proposer must be authorized to implement the Project, and the Project must pay for itself within the remaining term of the lease. New facilities, and those that have undergone substantial renovations, must be fully operational and have been occupied by the Proposer for more than one year prior to requesting funding under this RFP.

3.08. “Energy Review Team” means the Energy Review Team, which is advisory to the Office of Energy Resources and the Office of Economic Recovery and Reinvestment, and is created under the aegis of the Office of Economic Recovery and Reinvestment for the purposes of providing guidance on State applications and awards for Recovery Act funds under the State Energy Program, the Energy Efficiency and Conservation Block Grant, and related programs.

3.09. “Fund” means the funding allocated from the Recovery Act SEP, in accordance with the award by the US Department of Energy to the State of Rhode Island Office of Energy Resources, to support non-utility scale renewable energy projects.

3.10. "Municipality" means any city or town, or other political subdivision of the state.

3.11. “Municipal Renewable Energy Investment Program” shall mean those funds in the Renewable Energy Development Fund utilized by the Rhode Island Economic Development Corporation pursuant to R.I.G.L.§42-64-13.2 and R.I.G.L. §39-2-1.2 (c).

3.12. “Non-Profit Affordable Housing Renewable Housing Investment Program” means those funds in the SEP-non utility scale renewable energy funding utilized by the Rhode Island Economic Development Corporation pursuant to R.I.G.L.§42-64-13.2 and R.I.G.L. §39-2.1.2 (d).

3.13. “Non-utility scale project” means a project that is either a customer-sited facility or is designed for operating at a gross capacity of less than ten (10) megawatts, or less than

8.6 million kilocalories per hour, or both.

3.14. “OERR” means the Office of Economic Recovery and Reinvestment in the Executive Office of the Governor.

3.15. “Office” means the Office of Energy Resources in the Rhode Island Department of Administration.

3.16. "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

3.17. “Program” means the non-utility scale renewable energy program supported by ARRA-SEP funds as administered by the Office.

3.18. "Project" means the acquisition, ownership, operation, construction, reconstruction, rehabilitation, improvement, development, sale, lease, or other disposition of, or the provision of financing for any renewable energy facility.

3.19. "Project cost" means the sum total of all costs which are deemed reasonable and necessary for the development of a project. These shall include, but are not necessarily limited to, the costs of all necessary studies, surveys, plans, and specifications, architectural, engineering, or other special services, acquisition of land and any buildings on the land, site preparation and development, construction, reconstruction, rehabilitation, improvement, and the acquisition of any machinery and equipment or other personal property as may be deemed necessary in connection with the project (other than raw materials, work in process, or stock in trade); an allocable portion of the administrative and operating expenses; the cost of financing the project, and the cost of those other items, including any indemnity or surety bonds and premiums on insurance, legal fees, real estate brokers and agent fees,

3.20. "Project user" means the person, company, corporation, partnership, or commercial entity, municipality, state, or United States of America who shall be the user of, or beneficiary of, a project.

3.21. "Real property" means lands, structures (new or used), franchises, and interests in land, including lands under water, and riparian rights, space rights, and air rights, and all other things and rights usually included within the term. "Real property" shall also mean and include any and all interests in that property less than fee simple, such as easements, incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages to that real property.

3.22. “Recovery Act” means the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

3.23. “Renewable Energy” shall mean energy made useful for residential, commercial, industrial, institutional, or transportation purposes as an alternative to non-renewable energy and is from one or more of the following sources:

(1) Direct solar radiation;

(2) The wind;

(3) Movement or the latent heat of the ocean;

(4) The heat of the earth;

(5) Small hydro facilities;

(6) Biomass facilities using eligible biomass fuels and maintaining compliance with current air permits; eligible biomass fuels may be co-fired with fossil fuels, provided that only the renewable energy fraction of production from multi-fuel facilities shall be considered eligible;

(7) Fuel cells using the renewable resources referenced above in this section;

(8) Waste-to-energy combustion of any sort or manner shall in no instance be considered eligible except for fuels identified in subsection 3.06.

3.24. “Renewable Energy Development Fund” shall mean those funds administered by the Rhode Island Economic Development Corporation pursuant to R.I.G.L. §42-64-13.2, R.I.G.L. §39-2-1.2 and R.I.G.L. §39-26-7.

3.25. "Revenues" means with respect to any project, the rents, fees, tolls, charges, awards, payments, installment payments, repayments, grants, aid, appropriations and other assistance from the state, the United States or any corporation, department or instrumentality of either or of a political subdivision thereof, bond proceeds, investment earnings, insurance proceeds, and other income or profit derived from a project.

3.26. "Self-generator" means an end-use customer in Rhode Island that displaces all or part of its energy consumption through the use of a customer-sited generation facility;

3.27. “SEP” means the State Energy Program administered by the Office in accordance with the program requirements of the U.S. Department of Energy.

3.28. "Small hydro facility" means a facility employing one or more hydroelectric turbine generators and with an aggregate capacity not exceeding thirty (30) megawatts. For purposes of this definition, "facility" shall be defined in a manner consistent with Title 18 of the Code of Federal Regulations, section 92.201 et seq.; provided, however, that the size of the facility is limited to thirty (30) megawatts, rather than eighty (80) megawatts.

3.29. "State agency" means any office, department, board, commission, bureau, division, authority, or public corporation, agency or instrumentality of the state.

Section 4.00. Program Description. The non-utility scale renewable energy project program administered by the office is as follows:

4.01. Purposes. The purposes of the program are the following and the fund shall be administered in a manner that accomplishes these purposes:

(a) to create and retain jobs in Rhode Island,
(b) to realize energy cost savings,
(c) to reduce dependence on non-renewable forms of energy, especially fuels imported from other nations,
(d) to achieve environmental benefits, especially reductions in greenhouse gases,
(e) to leverage project funds and revenues,
(f) to facilitate market transformation, including especially for customer sited facilities,
(g) to provide opportunities for persons in all communities in the state to undertake non-utility scale renewable energy projects by assuring that projects from diverse renewable energy sources can be funded from program, and
(h) to comply with the applicable requirements of the Recovery Act.

4.02. Compliance with Recovery Act. All persons receiving support from the Program shall comply with applicable Recovery Act requirements and guidance.

4.03. Duration. The program shall commence upon the promulgation of these rules and shall conclude for the purposes of developing and supporting projects on March 31, 2012, project performance monitoring and reporting requirements shall continue as required by the Recovery Act. All projects funded by this program must be completed on or before March 31, 2012.

4.04. Funding Rounds. There shall be a minimum of two funding rounds from the Program:
(a) The first funding round shall total $3.395 million with applications due on December 10, 2009, or such other date as the Office may reasonably determine to effectuate the Program.
(b) The second funding round shall total $5.0 million with applications due on March 1, 2010, or such other date as the Office may reasonably determine to effectuate the Program.
(c) The first funding round may, in order to support one or more meritorious projects that would not be funded within the allocation set forth in sub-paragraph (a) above, be

increased by an amount not to exceed ten percent (10%) of the Recovery Act total funds allocated to the Program; in the event that the first finding is so increased, the second funding round shall be decreased by a corresponding amount.
(d) If funds from these two funding rounds, (a) and (b) above, are not fully obligated, the Office may establish one or more supplementary funding rounds to commit the un-obligated balance.

4.05. Project types and sizes. Project shall have the following characteristics in order to be eligible for support from this program:
(a) The project shall have as its primary purpose the development and/or implementation of a renewable energy resource in Rhode Island, as defined in section 3.22.
(b) Projects shall be categorized by size as follows:
(1) Residential projects to supply dwelling units, including premises of twelve dwelling units or less, with renewable energy.
(2) Small commercial and industrial projects to supply facilities of all types entities, including facilities of non-profit, corporations, as defined in section 7-6-2, and charitable, educational and religious organizations and state and political subdivisions as described in section 44-18-30, that qualify for electrical rates for small commercial industrial electrical rates and premises with more than twelve dwelling units with renewable energy
(3) Large commercial and industrial projects to supply facilities of all types of entities, including facilities of non-profit, corporations, as defined in section 7-6-2, and charitable, educational and religious organizations and state and political subdivisions as described in section 44-18-30, that qualify for large commercial-industrial electrical rates.
(4) Community and institutional projects, projects that would supply renewable energy to one or more municipalities or to hospital or educational institutions or state agency institutional complexes that serve or house one thousand or more persons.

(c) The project shall not be greater than:

(i) **[$10,000]** of support from the Fund per dwelling unit for residential projects,

(ii) **[$ 125,000]** of support from the fund for small commercial and industrial projects,

(iii) **[$ 500,000]** of support from the Fund for large commercial and industrial projects, or

(iv) **[$ 750,000]** of support from the Fund for community and institutional projects.

(d) The maximum level of support from the Fund shall be the funding level set forth in subsection (c) above or twenty-five percent (25%) of the total project cost, whichever amount is the lesser. A project may involve the use of more than one renewable energy resources provided that the aggregate level of support from the Fund does not exceed the limitation set forth in this subsection.

4.06. Ineligible Projects and Costs include:

(1) Projects that already have a fully executed contract to be funded or partially funded by Corporation programs, or any utility funded program, are not eligible for funding under this RFP.

(2) Projects to be completed for casinos or other gambling establishments, aquariums, zoos, golf courses or for swimming pools.

(3) Outdoor and low-efficiency wood boilers. Low- efficiency wood boilers shall be defined as any boiler that does not meet or exceed a minimum thermal efficiency of 83 as measured by testing thermal efficiency using either the EN 303-5 or ASHRAE 155P methods, and using the lower heating value of wood. Wood boilers that would use a fuel source other than wood pellets, wood chips, or firewood are not eligible under this RFP.

(4) Projects that are part of construction of new facilities and new construction commissioning.

(5) Power quality, power factor, and power conditioning improvements.

(6) Personal computers are not eligible and vehicles that are leased by the Proposer.

(7) The Proposer's staff time for developing, designing, or implementing the project and in-kind services and are not to be considered as cost-sharing.

(8) The project has a cost per annual energy generated of greater than $8,000 per 10 million BTUs of energy generated, is not a customer sited facility, and if used primarily to serve the electric customer''s load (i.e., not primarily exported to the utility grid), either cannot generate more electricity than is consumed on-site annually or does not exceed net metering limitations set forth in section 39-26-6.

4.07. Coordination with Other Programs. This Program shall be coordinated with other renewable energy programs in Rhode Island, including but not limited to the Renewable Energy Development Fund, in order to optimize the benefits of renewable energy development in the state to accomplish the purposes set forth in section 4.01 and consistent with the applicable Recovery Act requirements.

Section 5.00. Applications for utilization of funds from program.

5.01. Applications for utilization of funds from the Program shall use the procedures set forth in this Section 5.01 and shall be made on forms issued by the Office.

5.02. Applications for Funding. *Application Elements:* At a minimum, applications shall contain the following elements:

(a) A project description of one page or less, in a font no smaller than 11 point, with at least single spacing, and with at least one inch margins, which description shall (1) set forth the nature of the proposed project, and (2) describe location of the project, the type or types of renewable energy that are the subject of the proposed project, how the proposed project addresses the program purposes set forth in section 4.01 and the extent to which it is coordinated with other programs

(b) Qualification statement for the person or persons who will perform the proposed project, including, but not necessarily limited to:

(i) The experience of the person in performing projects of the kind of the proposed project.

(ii) If the proposed project involves a team of persons, the experience of key team members and an organization chart for the project team indicating the name of the team member, the team reporting structure and a narrative describing the responsibility of the team member.

(iii) Financial information demonstrating the capability of the person or team to complete the project successfully. Audited financial statements are not required for this application but will be prior to the final award for projects other than residential projects involving four dwelling units or less.

(iv) Other information at the discretion of the proposer that will demonstrate the person's or team's ability to achieve the purposes of the program as set forth in section 4.01 for this project.

(c) A project schedule including all major activities from notice to proceed to project operation.

(d) Project assurances, including:

(1) Assurances that the project will comply with applicable requirements and guidance of the Recovery Act, including: [RESERVED],

(2) Assurances that the project will comply with applicable provisions of municipal comprehensive plans, zoning ordinances, the Building Code, and state agency rules and regulations, and

(3) Assurance that there will be an independent inspection of the project after its completion to determine its consistency with the project application and design and its operational capability to meet energy production levels.

(4) Assurance that the project will be complete on or before March 31, 2012.

(5) Assurance that the project meets the definition of a non-utility scale project.

5.03 Application submission. (a) In addition to the multiple hard copies of applications required, applicants, other than for residential projects involving four dwelling units or less, are requested to provide their application in electronic format (CDRom or Diskette). Microsoft Word / Excel or PDF format is preferable. Only 1 electronic copy is requested. This CD or diskette should be included in the application marked "original".

5.04. Evaluation Criteria.

(a) Threshold Criteria. All applications shall, in order to be considered for funding, shall (i) be complete and include all necessary assurances and (ii) demonstrate feasibility including: technical feasibility – applications must include documented evidence of technical feasibility for the proposed renewable energy technology, and financial viability – applications must include evidence of commitments or expressions of interest from all funding sources.

(b) Competitive Criteria. For each project scale and type of renewable energy resource, applications that meet all threshold criteria set forth in subsection (a) shall be ranked as follows:

1. Job creation/retention (40%)
    - Full-time
    - Part-time

2. Energy Savings (kwh equivalents) (30%)
    - Annual reduction in natural gas consumption (mmcf),
    - Annual reduction in electricity consumption (MWh),
    - Annual reduction in electricity demand (MW),
    - Annual reduction in fuel oil consumption (gallons),
    - Annual reduction in propane consumption (gallons), or
    - Annual reduction in gasoline and diesel fuel consumption (gallons).

3. Cost-Effectiveness Savings (10%)
    - Estimated energy produced over the life of the project/project costs and project operation and maintenance costs.

4. Funds Leveraged (20%)
    - Funds leverage from the owner of the project.
    - Funds leveraged from public sources other than the Program.
    - Funds leveraged from private sources, including charitable and philanthropic sources.

(c) Bonus Criteria. To the competitive criteria set forth in subsection (b) above, there shall be added the following:

1. Benefits to low and moderate income households (up-to 5%).
2. Integration with other renewable or energy efficiency/energy conservation programs (up-to 5%).

5.04. Selection Process.

The Office shall review all applications submitted to it for funding renewable energy projects and shall use the following procedure in recommending projects to the OERR:

(a) The Office will review all applications to determine whether the application meets all threshold criteria; those that do will be submitted to a technical review committee established by the Energy Review Team.

(b) The technical review committee will evaluate all applications submitted to it in accordance with the competitive criteria and the bonus criteria and shall, for each project type and size, rank the applications in order of their score according to the competitive and bonus criteria; the technical review committee will report its evaluation and rankings to the Energy Review Team.

(c) The Energy Review Team shall review the report of the technical review committee and determine whether the competitive and bonus criteria have been used by the technical review committee in accordance with these regulations, and if the Energy Review Team so decides, then it shall transmit the report of the technical review committee to the Office and the OERR for selection of applications to be given awards.

(d) The Office, with the approval of the OERR, shall make the formal awards.

5.05. Method of disbursement of funds.

The OER shall disburse funds from the SEP-non utility scale renewable energy funding in the form of grants, rebates, loans, recoverable grants and other financial mechanisms, with or without security, for repayment, if any, and at rates, terms and other conditions as shall be deemed necessary, appropriate and in the best interest of the SEP-non utility scale renewable energy funding as determined by the OER. The disbursement of funds may in installments based on the level of completion of the project.

5.06. Repeat Funding and Maximum Funding Amount. Recipients, and affiliates of recipients, are ineligible for repeat funding for a project. No project funding shall exceed Seven Hundred Fifty Thousand Dollars ($750,000) from the Fund.

Section 6.0 Special Terms and Provisions Applicable to Receipt of Recovery Act Funds.

The Recovery Act was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, energy efficiency and renewable energy and other infrastructure that will provide long-term economic benefits, and stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Contractors shall use funds in a manner that maximizes job creation and economic benefit.
The Contractor shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Act itself and as discussed below, and shall require its contractors and subcontractors to comply, as appropriate.
The Contractor and the Office understand that the following provisions may be changed and additional requirements may be added and that each agrees to be bound by such changes, additions, and guidance as may be issued with respect to, and as required under, the Recovery Act or by the State.
I. Reporting Requirements
The Contractor agrees to obtain, retain, prepare, and provide to the Office or the Federal Office of Management and Budget, as requested by the Office, without limitation, the information required by the Recovery Act including but not limited to:
1. Monthly reports setting forth the percentage of the Project having been completed.
2. Monthly reports providing a description of the employment impact of Recovery Act funded work. The report should include:
(i) a brief description of the types of jobs created and jobs retained; (ii) an estimate of the number of jobs created and jobs retained; and (iiii) an estimate of the number of hours worked in the jobs created and retained.
3. Contractor's nine digit Data Universal Numbering System (DUNS) number and Central Contractor Registration plus four extended DUNS number.
4. Amount awarded to Contractor.
5. Amount received by Contractor.
6. Contractor type.
7. Date of award.
8. Projected period of performance.
9. Place of performance and area of benefit.
10. The names and compensation of the five most highly compensated officers of the Contractor if the Contractor in the preceding fiscal year received:
(i) 80 percent or more of its annual gross revenues in Federal awards; and (ii) $25,000,000 or more in annual gross revenues from Federal awards; and (iii) the public does not have access to information about the compensation of the senior executives of the Contractor through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), or 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USCS 6104].
11. List of Vendors awarded contracts and their DUNS number or name and zip code of

headquarters.
Contractor shall provide the foregoing reporting information on forms prescribed by the Office within five (5) business days of the end of the month unless otherwise required by the Office. Contractor further agrees to provide any additional information deemed necessary in the sole discretion of the Office, to enable the Office to comply with its reporting requirements under the Recovery Act and to respond to any Federal or State inquiry regarding the Work (as defined in Exhibit B).
II. Buy American
With respect to Work performed on public buildings or that constitutes a public work, the Contractor acknowledges to and for the benefit of the Office that it understands the Work being financed herein is being funded with monies made available by the Recovery Act and that such law contains provisions commonly referred to as "Buy American" requiring all iron, steel and manufactured goods used in the Work to be produced in the United States ("Buy American Requirements") and used by the Contractor or its contractors and subcontractors. The Contractor hereby represents and warrants to and for the benefit of the Office that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the Work will be or have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the Requirements is approved by an appropriate Federal agency, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Office, including from each contractor and subcontractor which has a contract financed with Recovery Act funds. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Office to recover any Recovery Act funds paid and any damages against the Contractor including any loss, expense or cost (including without limitation attorney's fees) incurred by the Office resulting from any such failure (including without limitations any impairment or loss of funding, whether in whole or in part, from the U.S. Department of Energy ("DOE") or the State or any damages owed to DOE or the State by the Office). The Office and the Contractor agree that DOE and the State are third party beneficiaries and may enforce the requirements of this Agreement.

A waiver may be provided, if an appropriate Federal agency determines that (1) applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel and manufactured goods produced in the United States will increase the cost of the overall Work by more than 25 percent. The Contractor must obtain any waiver(s) directly. All applications for waivers shall be provided to the Office for review prior to submission. Copies of any waivers granted to the Contractor must be provided to the Office. Additional guidance on the Buy American Requirements and waiver process can be found on www.recovery.gov.

III. Wage Rate Requirements
In accordance with the Recovery Act and other Federal requirements and Rhode Island

labor law, all laborers and mechanics employed by contractors and subcontractors providing construction related services on the Work shall be paid wages at rates not less than those prevailing on Works of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code, and as required by the Rhode Island State Department of Labor and Training.

(1) *Minimum wages*. (i) All laborers and mechanics employed or working upon the site of the Work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the Work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. An additional classification and wage rate and fringe benefits therefore will be approved only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contractor agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contractor to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor,

Washington, DC 20210. The Administrator, or an authorized representative, is required to approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contractor or will notify the Contractor within the 30-day period that additional time is necessary.
(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contractor do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contractor shall refer the questions, including the views of all interested parties and the recommendation of the Contractor, to the Administrator for determination. The Administrator, or an authorized representative, is required to issue a determination within 30 days of receipt and so advise the Contractor or will notify the Contractor within the 30-day period that additional time is necessary.
(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
(2) *Withholding*. The Office shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the Work, all or part of the wages required by the contract, the Office may, after written notice to the Contractor, sponsor, applicant, and owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
(3) *Payrolls and basic records*. (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof

of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Office. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Office or the Wage and Hour Division of the Federal or State Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Contractor to require a subcontractor to provide addresses and social security numbers to the Contractor for its own records, without weekly submission to the Office.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information described under § **5.5** (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § **5.5** (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; and

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.
(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code and other Rhode Island State statutes, rules and regulations.
(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Office or the State or Federal Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, after written notice to the Contractor, sponsor, applicant, or owner, the Office and other Federal and State agencies may take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.
(4) *Apprentices and trainees* -- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall

be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, 29 CFR part 30, and the Rhode Island State Human Rights Law.
(5) *Compliance with Copeland Act requirements*. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Agreement.
(6) *Subcontracts*. The Contractor or subcontractor shall insert this section in any subcontracts and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these requirements.
(7) *Contract termination: debarment*. A breach of this section may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12 and in this Agreement.
(8) *Compliance with Davis-Bacon and Related Act requirements*. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
(9) *Disputes concerning labor standards*. Disputes arising out of the labor standards

provisions of this Agreement shall not be subject to the general disputes clause of this Agreement. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR parts 5, 6, and 7 or the Rhode Island State Department of Labor and Training. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Office, the U.S. Department of Labor, the Rhode Island State Department of Labor or the employees or their representatives.

(10) *Certification of eligibility*. (i) By entering into this Agreement, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contractor shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any contract in excess of $2,000 for construction, alteration or repair (including painting and decorating) being paid with Recovery Act funds.